

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Periodic Reporting  
(Proposal Six)

Docket No. RM2017-10

ORDER GRANTING REQUEST FOR ACCESS IN PART

(Issued August 15, 2017)

On August 7, 2017, United Parcel Service (UPS) filed a motion pursuant to 39 C.F.R. § 3001.21 and 39 C.F.R. § 3007.50 for access to a non-public library reference from Docket No. RM2017-10 (USPS-RM2017-10/NP1) filed by the Postal Service on July 28, 2017, as part of its Proposal Six in this proceeding.<sup>1</sup> UPS has also requested access to additional non-public library references in Docket No. ACR2016 (USPS-FY16-NP14, USPS-FY16-NP15, USPS-FY16-NP16) which were referenced in the Postal Service's petition requesting approval of Proposal Six.<sup>2</sup> UPS seeks access to these library references for its outside counsel and consultants identified in Exhibit 1

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<sup>1</sup> United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Under Protective Conditions, August 7, 2017 (UPS Motion).

<sup>2</sup> UPS Motion at 1; see Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Six), July 28, 2017, at 2, 5, 9 (Proposal Six).

to its motion. UPS Motion at 1, 4. Each person for whom access is being sought has executed a copy of the Commission's standard protective order conditions. *Id.* at 1-2.

In support of its motion, UPS alleges that it has a substantial interest in Proposal Six and that the library references to which it seeks access are directly relevant to the Postal Service's proposal. *Id.* at 2. UPS asserts further that access to the non-public library references "is necessary to evaluate the extent to which Proposal Six impacts the cost models for Parcel Select and Parcel Return Service mail." *Id.* It also states that use of the non-public materials "will substantially assist in responding to the arguments raised by the initial comments in this docket." *Id.* at 2-3.

On August 10, 2017, the Postal Service filed an answer in partial opposition to the UPS Motion.<sup>3</sup> In its Answer, the Postal Service expresses no opposition to UPS's representatives being given access to non-public library references USPS-RM2017-10/NP1, USPS-FY16-NP15, and USPS-FY16-NP16. See Postal Service Answer at 1, 4. However, the Postal Service "strongly opposes the [UPS] motion with respect to access to USPS-FY16-NP14." *Id.* at 1.

The Postal Service bases its opposition to UPS's request for access to USPS-FY16-NP14 on essentially three grounds. First, it claims that UPS is incorrect in asserting that access to USPS-FY16-NP14 is "necessary to evaluate the extent to which Proposal Six impacts the cost models." *Id.* at 2. Second, the Postal Service asserts that UPS's access request is overly broad and, if granted, would give UPS access to information that goes beyond the purchased highway transportation inputs used as inputs to USPS-FY16-NP16. *Id.* at 2-3. Third, the Postal Service notes UPS's apparent failure to comply with the procedures for gaining access to non-public information when, as in this case, third-party information is involved.<sup>4</sup> The Postal

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<sup>3</sup> Answer of the United States Postal Service in Partial Opposition to UPS Motion for Access to Nonpublic Material, August 10, 2017 (Postal Service Answer).

<sup>4</sup> *Id.* at 3. On August 14, 2017, the Postal Service filed a notice that it had received comments from Canada Post Corporation supporting the Postal Service's opposition to UPS's access to the non-public material in USPS-FY16-NP14. See United States Postal Service Notice of Filing Third Party Comments, August 14, 2017.

Service concludes by noting its concern over possible increased risks of damage from inadvertent disclosure of disaggregated cost information to direct competitors like UPS. See Postal Service Answer at 3-4.

The Commission concludes that UPS should be given access to non-public library references USPS-FY16-NP15 and USPS-FY16-NP16, but that access to USPS-FY16-NP14 should be denied. The Postal Service's reference to USPS-FY16-NP14 in its request for approval of Proposal Six exists to note that certain purchased highway transportation inputs used in the USPS-FY16-NP16 model no longer match inputs used in the FY 2016 version of the model. *Id.* at 1-2. As explained by the Postal Service, this difference in the inputs to the two versions of the model is due to changes to the methodology for the treatment of attributable highway transportation costs approved in Docket No. RM2016-12<sup>5</sup> and is independent of the changes presented by Proposal Six. See Postal Service Answer at 2. For that reason, the Postal Service states that UPS's access to USPS-FY16-NP14 is "unnecessary for the purpose for which UPS claims to intend to employ it."<sup>6</sup>

Given that USPS-FY16-NP14 is used solely to provide inputs to the USPS-FY16-NP16 model, and that the proposed changes to the USPS-FY16-NP16 model do not affect how USPS-FY16-NP14 data is used in the model, access to the USPS-FY16-NP14 does not appear to be necessary for UPS to evaluate the extent of the impact of Proposal Six's methodology change on cost models for Parcel Select and Parcel Return Service mail. Having concluded that access to library reference USPS-FY16-NP14 is unnecessary; the Commission need not consider the remaining assertions by the Postal Service in opposition to the UPS Motion.

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<sup>5</sup> Docket No. RM2016-12, Order No. 3973, Order on Analytical Principles Used in Periodic Reporting (Proposal Four), June 22, 2017.

<sup>6</sup> *Id.* at 2. Nor is access to USPS-FY16-NP14 needed to assist UPS "in responding to the arguments raised by the initial comments in this docket." UPS Motion at 2-3. Comments are not due in this proceeding until September 15, 2017. Order No. 4023, Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (Proposal Six), August 1, 2017, at 3. To date, no comments have been filed. Moreover, the order establishing this proceeding made no provision for reply comments. See *id.*

Denial of the UPS Motion for access to USPS-FY16-NP14 is without prejudice to UPS renewing its request should it later believe it has adequate grounds warranting such access. In the event UPS renews its request, it should address the appropriateness of the scope of its request and issues regarding access to third-party information.

*It is ordered:*

1. The UPS Motion for access to USPS-RM2017-10/NP1, USPS-FY16-NP15, and USPS-FY16-NP16 is granted effective upon the issuance of this Order.
2. The UPS Motion for access to USPS-FY16-NP14 is denied without prejudice as discussed in the body of this Order.

By the Commission.

Stacy L. Ruble  
Secretary